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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

In Re Bard IVC Filters Products  
Liability Litigation

No. MD-15-02641-PHX-DGC

**PLAINTIFF'S MOTION *IN LIMINE*  
NO. 6: SOCIAL SECURITY  
DISABILITY BENEFITS WHICH ARE  
BARRED BY WISCONSIN'S  
COLLATERAL SOURCE RULE**

(Assigned to the Honorable David G.  
Campbell)

**(Tinlin Bellwether Case)**

Oral Arguments Requested

**MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs by and through counsel undersigned and pursuant to Fed. R. Evid. 402 and 403 and legal authority regarding Wisconsin's collateral source rule, respectfully move the Court for an order *in limine* precluding evidence, testimony, statements or arguments of Plaintiff's social security disability benefits or applications to obtain such benefits which are barred by Wisconsin's collateral source rule. Plaintiffs anticipate that in argument or statements to the jury or in questions to witnesses, Defendants may attempt to elicit information regarding social security disability benefits applied for and/or received by Debra Tinlin. However, as discussed below, such evidence is barred by the collateral source

1 rule.

2 The collateral source rule is considered to serve both as a rule of evidence and as a  
3 rule of damages. See *Leitinger v. DBart, Inc.*, 302 Wis. 2d 110, 736 N.W.2d 1. As a rule  
4 of evidence, the collateral source rule bars the admission of evidence that the plaintiff  
5 received benefits from a collateral source as compensation for any part of the loss.  
6 *Lettinger*, 736 N.W.2d at 9. As a rule of damages, “an award of damages cannot be limited  
7 to or reduced by a collateral source payment.” *Id.* Accordingly, the traditional form of the  
8 rule has prevented the subtraction of benefits received from a collateral source including  
9 health insurance, federal medical programs, worker’s compensation payments, welfare  
10 benefits, and even gratuitous benefits from a plaintiff’s damage award. *Id.*

11 Examples of objectionable testimony sought by Plaintiffs to be excluded include  
12 deposition testimony of Plaintiff’s neurologist, Heather Stanko, M.D. Dr. Stanko was  
13 questioned about a letter she wrote on Plaintiff’s behalf in of support of an application for  
14 Social Security permanent disability benefits. Exhibit A, Deposition of Heather Stanko,  
15 M.D. dated January 22, 2019, 40:13-41:5 and 69:11-16. In addition, attached hereto as  
16 Exhibits B and C are correspondence dated June 8, 2005 from Dr. Stanko and an interoffice  
17 phone message to Dr. Stanko regarding Plaintiff’s request for a letter to support an  
18 application for disability benefits dated June 3, 2005, attached hereto as Exhibit 3. Both  
19 Exhibits were attached to the Deposition of Heather Stanko, M.D.

20 These documents as well as testimony, arguments or statements are inadmissible  
21 pursuant to Wisconsin’s collateral source rule. For reasons set forth herein, Plaintiffs  
22 respectfully request the Court for an order in limine that is supported by Fed. R. Evid. 402  
23 and 403 and legal authority regarding Wisconsin’s collateral source rule.

1 RESPECTFULLY SUBMITTED this 29th day of March, 2019.

2 BEUS GILBERT, PLLC

3 By: /s/ Mark S. O'Connor

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of March, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/Jessica Gallentine